

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION

SCOTT HOWELL d/b/a  
MAYFIELD GROCERY,

Plaintiff,

v.

No. 1:08-cv-1291

NAUTILUS INSURANCE COMPANY  
and TOM CROSS,

Defendants.

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ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

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On November 26, 2008, Defendant Tom Cross filed a motion to dismiss and, on May 4, 2009, both Cross and co-defendant, Nautilus Insurance Company, filed a motion to dismiss claims under the Tennessee Consumer Protection Act ("TCPA"), Tenn. Code Ann. § 47-18-101 *et seq.* On December 17, 2008, the Plaintiff, Scott Howell, moved to remand this action back to state court. The Court referred these motions to the magistrate judge for a report and recommendation. On June 16, 2009, Magistrate Judge Edward Bryant issued his report, recommending that the Plaintiff's motion to remand to the state court be granted. After applying the appropriate standard for assessing fraudulent joinder, he found that this Court lacks subject matter jurisdiction under 28 U.S.C. § 1332(a)(1) because there is not complete diversity among the parties. He also recommended that the motion to dismiss Cross and motion to dismiss claims under the TCPA should be decided in state court. According to the Court's docket, no objections to the magistrate judge's report and recommendation have been filed pursuant to 28 U.S.C. § 636(b)(1)(C), and the time for filing objections has passed. See Fed. R. Civ. P. 72(a).

After a review of the magistrate judge's report and recommendation, the Court ADOPTS Judge Bryant's findings and recommendations, and Plaintiff's motion to remand to state court is GRANTED. The pending motion to dismiss Cross and motion to dismiss the Plaintiff's claims under the TCPA can be determined by the state court.

IT IS SO ORDERED this 17th day of July, 2009.

s/ J. DANIEL BREEN  
UNITED STATES DISTRICT JUDGE